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MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUL 12 2012

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

MARK H. and LOVASIA H.,	)	2 CA-JV 2012-0018
	)	2 CA-JV 2012-0022
Appellants,	)	(Consolidated)
	)	DEPARTMENT A
v.	)	
	)	<u>MEMORANDUM DECISION</u>
ARIZONA DEPARTMENT OF	)	Not for Publication
ECONOMIC SECURITY,	)	Rule 28, Rules of Civil
	)	Appellate Procedure
Appellee.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J19736800

Honorable Leslie Miller, Judge

AFFIRMED

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By Ken Sanders

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Attorneys for Appellant Mark H.

Pima County Office of Children's Counsel  
By Sara E. Lindenbaum

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Attorneys for Appellee

ECKERSTROM, Presiding Judge.

¶1 Mark H., father of Lovasia H., born in July of 1995, and Lovasia, appeal from the juvenile court's order adjudicating Lovasia dependent as to Mark. In their consolidated appeals, they both challenge the sufficiency of the evidence supporting the court's ruling. We affirm.

¶2 We view the evidence on appeal "in the light most favorable to sustaining" the juvenile court's order. *Willie G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 231, ¶ 21, 119 P.3d 1034, 1038 (App. 2005). Mark has had physical custody of and cared for Lovasia since she was about two years old. During that time she had very little contact with her biological mother. Lovasia has had serious emotional issues for a number of years, which grew worse during her teenage years. Suffering from depression, she attempted suicide and engaged in other self-destructive behaviors. There was conflict in the home, and Lovasia had difficulty getting along with Mark and her stepmother, Delilah, whom Mark had married when Lovasia was about five years old. Among the factors that apparently contributed to Lovasia's emotional issues was that one of her stepsisters had sexually abused her when she was about seven years old and the stepsister was about twelve. Lovasia did not tell Mark about the incident until November 2010, when Delilah found then fifteen-year-old Lovasia engaging in sexual activity with Lovasia's approximately nine-year-old half-brother. Lovasia claimed Delilah had "spanked" her with a belt after discovering them. When Mark confronted Lovasia, she told him her stepsister had sexually abused her.

¶3 In February 2011, after a night of arguing that had continued the next morning, Lovasia left home. She testified at the dependency hearing in February 2012 that Mark had told her if she refused to listen to him and follow his rules she needed to leave the home; and so she did. Mark testified at the hearing that Lovasia had said she “was done listening” and had left on her own, after which Mark reported to police Lovasia was a runaway. Lovasia was taken to a shelter and Child Protective Services (CPS) contacted Mark, who agreed Lovasia could be placed in a group home for ninety days. He admitted to a CPS case manager that he had hit Lovasia. After Lovasia returned home in May, the family continued to obtain services through CPS and Casa de los Niños. The situation at home was stable, and CPS terminated its in-home services and closed its case in October. But shortly thereafter, things disintegrated.

¶4 Lovasia testified at the dependency hearing that she had stopped taking her prescribed antidepressants. After an argument with Mark and Delilah in October 2011, Lovasia had grabbed a butcher knife and said she was going to kill herself. She then was admitted to an inpatient mental health facility for nearly two weeks. But after she returned home, she attempted suicide and was sent to a different facility for another two weeks. Lovasia did not want to go home when she was discharged from that facility because, she claimed, “nothing had changed,” and she “didn’t want the same thing to happen again.” At the recommendation of Casa de los Niños, she was placed in a therapeutic foster home for thirty days.

¶5 On December 2, 2011, the end of the thirty-day period, CPS took temporary custody of Lovasia because Mark refused to pick her up from the foster home.

The Arizona Department of Economic Security (ADES) filed a dependency petition five days later in which it alleged, *inter alia*, Lovasia “is a dependent child within the provisions of A.R.S. § 8-201(13)” based on incidents of domestic violence, suicide attempts, and the history of sexual abuse in the home between siblings. Mark did not contest ADES’s temporary custody and he did not offer to pick her up or arrange an alternative placement during the first month after CPS took custody of Lovasia. At the contested dependency hearing in February 2012, Mark testified he wanted Lovasia returned home. And Lovasia testified she wanted to be home. Ruling from the bench at the end of the two-day hearing, the juvenile court granted the petition. Lovasia and Mark appealed and we have consolidated the appeals.

¶6 Lovasia and Mark challenge the sufficiency of the evidence to support the adjudication order. Mark asserts Lovasia cannot be dependent because there was no evidence he had abused or neglected her. He argues a finding of dependency based on neglect is negated by the fact that he wanted Lovasia back in the home before and at the time of the dependency hearing. Mark insists ADES’s contention throughout the dependency hearing that he would not permit Lovasia to come home “was belied by the evidence,” pointing to Lovasia’s testimony that initially she did not want to go home, and his own testimony that he had wanted her to return. Mark contends the only evidence that he had not wanted her to come home was from CPS investigator MiaMichelle Henry, adding that even she testified Lovasia had not wanted to go home. Finally, Mark maintains there was insufficient evidence Lovasia was lacking a parent willing and capable of exercising proper parental care and control. He cites evidence that

demonstrated his concern for Lovasia, his willingness to obtain proper services for her, his cooperation with ADES and CPS, and his ability to parent.

¶7 Lovasia raises similar arguments. She contends ADES had alleged she was dependent based on neglect, insisting there was insufficient evidence Mark had neglected her. She argues that the evidence also fell short of establishing she had no parent willing or able to provide proper parental care and control as contemplated by § 8-201(13)(a)(i) and that the court could not find her dependent because at the time of the hearing Mark wanted her home and she wanted to be home. She concedes her mental health issues are “serious” and that she has been, at times, a danger to herself, but she insists Mark has responded appropriately and has assured her she would receive appropriate services and treatment.

¶8 In order to find that a child is dependent, the juvenile court must find a preponderance of the evidence establishes the child fits into one or more of the definitions of a dependent child in § 8-201(13). *See* A.R.S. § 8-844(C)(1); Ariz. R. P. Juv. Ct. 55(C). Section 8-201(13)(a)(i) provides that a dependent child is one “[i]n need of proper and effective parental care and control and . . . who has no parent or guardian willing to exercise or capable of exercising such care and control.” Section 8-201(13)(a)(iii) states a child is dependent when the child’s “home is unfit by reason of abuse, neglect, cruelty, or depravity by a parent.” Because the main focus in a dependency proceeding is the child’s best interest, a fact-based issue, the juvenile court is granted broad discretion in determining whether a child is dependent. *See Willie G.*, 211 Ariz. 231, ¶ 21, 119 P.3d at 1038; *Ariz. Dep’t of Econ. Sec. v. Superior Court*, 178 Ariz.

236, 239, 871 P.2d 1172, 1175 (App. 1994). We will affirm such an order unless the court has abused that discretion, *In re Pima Cnty. Juv. Action No. 93511*, 154 Ariz. 543, 545-46, 744 P.2d 455, 457-58 (App. 1987), or there is no reasonable evidence to support the factual findings upon which the court's order is based. *Willie G.*, 211 Ariz. 231, ¶ 21, 119 P.3d at 1038. And as we previously stated, in reviewing the court's order, we view the evidence in the light most favorable to sustaining it. *Id.*

¶9 At the end of the dependency hearing, Mark argued there was insufficient evidence to support a finding of dependency on any ground but urged the juvenile court that if it were to find Lovasia dependent, it should do so pursuant to § 8-201(13)(a)(i), on the ground that she had no parent willing or capable of exercising proper parental care and control, instead of basing it on neglect or abuse under § 8-201(13)(a)(iii), arguing there was no evidence to support the latter finding. The court responded that it would not consider abuse as a ground for the adjudication because ADES had not alleged abuse in its petition, only neglect. From its comments, we infer the court did not believe § 8-201(13)(a)(i) provides an independent basis for a dependency adjudication, contrary to the plain language of the statute, which specifies five distinct definitional bases for finding a child dependent. *See In re Maricopa Cnty. Juv. Action No. J-75482*, 111 Ariz. 588, 590-91, 536 P.2d 197, 199-200 (1975) (child may be adjudicated dependent based solely on finding no parent capable or willing to exercise proper parental care and control of child; finding of neglect not necessary); *see also Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 14, 110 P.3d 1013, 1017 (2005) (appellate court need not apply principles of construction to determine meaning of statute when meaning can be determined from

statute's plain language). In its petition, ADES did not specify which subsections it was alleging as the bases for its contention that Lovasia was a dependent child; rather, it alleged she was dependent "within the provisions of A.R.S. § 8-201(13)."

¶10 In any event, based on the factual findings the juvenile court made on the record at the end of the hearing, it seems to have adjudicated Lovasia dependent based on both grounds. We agree with ADES that § 8-201(13)(a)(i) and (a)(iii) are interrelated and the right to proper and effective parental care can include "physical care and emotional security." *In re Maricopa Cnty. Juv. Action No. JS-8441*, 175 Ariz. 463, 469, 857 P.2d 1317, 1323 (App. 1993), *abrogated on other grounds by Kent K.*, 210 Ariz. 279, ¶ 12, 110 P.3d at 1016.

¶11 The juvenile court commended the family on the progress made with the assistance of services ADES had been providing. But the court found continued assistance was necessary "to ensure that [Mark, Lovasia, and Delilah] can live in a peaceful [environment] . . . without tremendous strife, without being suicidal, without having frustration, without [Delilah] having to live in her room which is not an acceptable resolution of things." The court believed the family was moving in the right direction. But it clearly was concerned about Lovasia's transition back to the home, finding it had to be gradual and facilitated by appropriate, ADES-monitored services to ensure Lovasia's safety, increase the likelihood the changes would be permanent, and decrease the likelihood the situation would disintegrate.

¶12 Reasonable evidence supported the finding that Mark at times had been incapable of exercising, and was even unwilling to exercise, proper and effective parental

care and control. As noted above, at one point Mark refused to have Lovasia returned to the home after she had been living in the therapeutic foster home, and he did not make alternative arrangements for her care. In addition, the juvenile court had before it evidence Mark had minimized Lovasia's suicide attempts and regarded her behavior as dramatic and a form of "acting out." The evidence also showed that, after CPS stopped monitoring the family, Lovasia's condition had deteriorated, requiring Lovasia's hospitalization and placement in foster care. And, there was evidence Mark had conditioned Lovasia's return to the home on her complete compliance with all household rules. Although Mark argues on appeal there was nothing "unreasonable, much less abusive or neglectful" about the fact he expected Lovasia to follow rules at home, the court did not necessarily disagree. Rather, it may have credited the testimony of the CPS investigator and therapist who opined it was unreasonable to expect a sixteen-year-old to comply one hundred percent of the time with all rules and to deny her a residence unless and until she agreed to do so.

¶13 Although Mark testified at the hearing he wanted Lovasia to return home and had wanted her to return in December 2011 after she had been in foster care, CPS investigator MiaMichelle Henry testified she had become involved with the family in December 2011 because Mark refused to retrieve Lovasia from the therapeutic foster home where Casa de los Niños had placed her. According to Henry, Mark had no alternative plan for Lovasia. And therapist Trina Simms testified she had been involved with the family since October 2011, but it was not until February 2012, a week before the

dependency hearing, that Mark had told her he wanted Lovasia returned home. Until then, Mark had been looking into other options for dealing with Lovasia.

¶14 The therapist testified further that what Lovasia needed in light of her attempted suicide was family support. The juvenile court reasonably could have found Mark did not provide that support. Henry stated Mark did not seem to understand the severity of Lovasia's mental health issues. Lovasia had told Henry she felt unloved at home, had conflict with her stepmother, and was doing better at her out-of-home placement. According to the therapist, when Lovasia was in treatment and needed more contact with her family in general and Mark in particular, he did not respond by giving her more time. Although Mark did arrange some therapy for Lovasia on his own, he and Delilah were remiss in ensuring Lovasia continued to take prescribed medication for depression, which the juvenile court could have found contributed to her plummeting mental status in the fall of 2011 and her attempted suicide. As further evidence Lovasia was not being supervised appropriately or sufficiently, the court also could have considered the fact she claimed to have been sexually abused by her stepsister, she had engaged in sexual acts with her younger half-brother, and Delilah had hit her with a belt after the latter incident.

¶15 The juvenile court is "in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004); *accord Pima Cnty. No. 93511*, 154 Ariz. at 546, 744 P.2d at 458. This court will not reweigh the evidence, which is essentially what Mark and Lovasia are asking us to do. *See Jesus M.*

*v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12, 53 P.3d 203, 207 (App. 2002). The court was well aware of, and even commented on, the evidence favorable to Mark, and knew based on Mark's and Lovasia's testimony that he wanted Lovasia to come home and she wanted to go home.

¶16 It was for the juvenile court to consider and weigh all of the evidence, resolve the conflicts in the evidence, and determine whether a preponderance of the evidence established Lovasia was a dependent child at the time of the hearing. Given the record before us and the deference to which the juvenile court is entitled, we have no basis for disturbing the court's February 2012 order adjudicating Lovasia dependent. We therefore affirm.

*/s/ Peter J. Eckerstrom*

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PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

*/s/ Joseph W. Howard*

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JOSEPH W. HOWARD, Chief Judge

*/s/ J. William Brammer, Jr.*

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J. WILLIAM BRAMMER, JR., Judge